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In re application of: Ito et al.
Serial Number: 09/710,892
Filed: November 14, 2000
For: FUEL HOSE

DECISION
ON PETITION

This is a decision on the PETITION TO RESET A PERIOD FOR REPLY DUE TO LATE RECEIPT OF AN OFFICE ACTION, filed October 17, 2002. The petition requests that the period for reply to the Office action dated March 27, 2002 be restarted and a retroactive rescinding of any prospective Notice of Abandonment. A Notice of Abandonment was mailed out October 22, 2002.

DECISION

Since the petitioner asserts that the applicant did not receive the Office letter mailed March 27, 2002, the request is accepted as a petition under 37 C.F.R. § 1.181 (no fee) and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action, TMOG 1156 O.G. 53, November 16, 1993, (see also MPEP 711.02 - NEW PROCEDURE TMOG 1170 O.G. 114).

As set forth in MPEP § 711.03(c) II - PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION:

"The showing required to establish the nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in the practitioner's statement."

The evidence presented is sufficient, under MPEP 711.03(c)(II) to establish that the Office letter mailed on March 27, 2002 was not received at the applicant's correspondence address. The evidence provided includes a statement by the petitioner that the Office letter mailed on March 27, 2002 was not received by the applicant and a statement

attesting that a search of the docket records or equivalent documents were made and the results of such a search revealed that the Office letter mailed on March 27, 2002 was not received and petitioner has provided a copy of the docket record where the nonreceived Office communication would have been entered had it been received.

The petition is granted.

The application is withdrawn from abandonment and the office action originally mailed March 27, 2002 will be remailed and the period for response restarted from the mail date of the office action.

JM Stone

Jacqueline M. Stone, Director
Technology Center 1700
Chemical and Materials Engineering

JACOBSON HOLMAN PLLC
400 Seventh Street N.W.
Suite 600
WASHINGTON, DC 2004